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86-00053

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Honorable L. W. Noonan
Judge of Probate
P. O. Box 7
Mobile, Alabama 36601

Probate Court - Bonds -
Administrators and Executors -
Costs and Fees

Sureties on bond of an
administrator or executor are
not responsible for court
costs where there are no
assets in the estate from which
to pay the same.

Probate Court does not collect
court costs where there are no
assets in the estate to pay
them. If petitioner is
indigent, probate judge may
waive court costs.

Dear Judge Noonan:

Reference is made to your request for an opinion from
the Attorney General regarding the liability of a surety on
the bond of an executor or an administrator of an estate.
You specifically posed the following questions:

1. Is a surety on the bond of an
Administrator, Executor, Guardian or
Personal Representative, etc.
ultimately responsible for costs of
court where there are no assets in
the estate from which to pay same

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and where the bonded Administrator,
etc. is not guilty of any wrongdoing
or misconduct in said administration?

2. Does the Probate Court have judicial discretion and authority to waive costs of court where the evidence indicates that there are no assets in an estate from which said costs may be paid or taxed; or where a petitioner, to which costs may be taxed in a proceeding, is indigent?

Your first question is to be answered in the negative. Code of Alabama 1975, Section 43-2-80 requires executors, administrators and special administrators of estates, except where exempted, to give bond to be payable to and approved by the probate judge of the county having jurisdiction over the estate. It states that under such bond the executor or administrator shall be "conditioned to perform all the duties which are or may be required of him as such executor or administrator." The limits of the liability of an executor or administrator is defined in Code of Alabama 1975, Section 43-2-110 as follows:

"No executor or administrator is liable, except in the case provided by section 43-2-62, beyond the amount of assets which have come to his hands or which have been lost, destroyed, wasted, injured, depreciated or not collected by want of diligence on his part or an abuse of his trust."

Thus, an executor or administrator is not liable beyond the amount of the assets of the estate, except if he fails to give the required notice to creditors, if there has been no wrongdoing on his part.

The sureties are only liable to the point that the administrator or executor is liable and the administrator or executor is liable only to the amount of the assets in the estate. If there are not sufficient assets in the estate to pay court costs, the administrator or executor or his

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sureties are not responsible for them. Therefore, in answer to your first question, a surety on the bond of an administrator, executor, or personal representative, cannot be responsible for court costs where there are no assets in the estate to pay the same and where the bonded administrator or executor is not guilty of any wrongdoing in administering the estate.

Turning to your second question, if there are no assets in an estate from which to pay the court costs in the administration of the estate, there are no funds from which the court costs can be paid and the Probate Court simply cannot collect such costs. If the petitioner is indigent, the Probate Judge may, in his discretion, waive the court costs.

I hope that your questions have been adequately answered.

If our office can be of assistance to you in the future, please let us know.

Sincerely,

CHARLES A. GRADDICK
ATTORNEY GENERAL
BY:

A handwritten signature in cursive script, appearing to read "Lynda Knight Oswald".

LYNDA KNIGHT OSWALD
ASSISTANT ATTORNEY GENERAL

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